

REMARKS

Applicant has studied the Office Action dated January 29, 2007. Claims 1, 11 and 17 are independent claims. Claims 1, 11, 13, 14 and 17 have been amended. Claims 4, 16 and 19 have been canceled without prejudice.

No new matter has been added. Claims 1, 2, 5, 6, 11-15, 17 and 18 are pending.

It is submitted that the application, as amended, is in condition for allowance.

Reconsideration and reexamination are respectfully requested.

Amendments to the Claims

Claim 17 has been amended to correct a typographical error, specifically the repeated recitation of a "comparing" limitation as part of the first "downloading" limitation. It is respectfully submitted that the amendment has support in the application as originally filed and is not related to patentability.

§ 112 Rejections

The Examiner rejected claim 19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner asserted that the phrase "the cable modem" in line 8 has insufficient antecedent basis.

With this paper, claim 19 has been canceled. It is respectfully submitted that the rejection is now moot and it is respectfully requested that the Examiner withdraw the rejection.

§ 102 Rejections

Claims 11, 13, 14, 16 and 19 were rejected under 35 U.S.C. § 102(e) as being anticipated by DiNatale et al. ("DiNatale" WIPO Pub. No. WO 02/48897 A1). Applicant respectfully traverses the rejection.

It is respectfully noted that a proper rejection for anticipation under § 102 requires complete identity of invention. The claimed invention, including each element thereof as recited in the claims, must be disclosed or embodied, either expressly or inherently, in a single reference. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991); Standard Havens Prods., Inc. v. Gencor Indus., Inc., 953 F.2d 1360, 1369, 21 U.S.P.Q.2d 1321, 1328 (Fed. Cir. 1991).

With this paper, claims 16 and 19 have been canceled. It is respectfully submitted that the rejection is now moot with respect to those claims and it is respectfully requested that the Examiner withdraw the rejection.

It is respectfully noted that independent claim 11 has been amended with this paper to recite comparing name information related to the detected configuration file with name information related to a previously stored configuration file and comparing version information related to the detected configuration file with version information related to the previously stored configuration file only if the name information of the detected configuration file is identical to the name information related to the previously stored configuration file. It is respectfully submitted that DiNatale fails to disclose these limitations and, therefore, it is respectfully asserted that claim 11, as well as claims 13 and 14, which depend from claim 11, are allowable over the cited reference.

It is respectfully noted that the amended limitations of claim 11 are similar to those recited in claim 17. Therefore, the rejection of independent claim 11 will be discussed with regard to claim 17, which was rejected under 35 U.S.C. § 103(a).

§ 103 Rejections

Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over DiNatale in view of Gatherer et al. ("Gatherer" U.S. Pat. No. 6,549,584) in view of Rainard (U.S. Pat. No. 5,473,610). Applicant respectfully disagrees with the Examiner's interpretation of DiNatale and respectfully traverses the rejection.

It is respectfully noted that the Federal Circuit has provided that an Examiner must establish a case of prima facie obviousness. Otherwise the rejection is incorrect and must be overturned. As the court recently stated in In re Rijkaert, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993):

"In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. 'A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.' If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned." (citations omitted.)

It is respectfully noted that the claimed invention is directed to an apparatus and method for initializing a cable modem that is capable of reducing a time required to initialize a cable modem by only receiving version information related to a configuration file registered in the DHCP server and initializing the cable modem based on the previously stored configuration file when a comparison of the received version information with version information related to the previously stored configuration file indicates that the received version information is identical to the version information of the previously stored configuration file. It is respectfully submitted that the claimed invention can initialize the cable modem based on the previously stored configuration file without downloading a new configuration file for initializing the cable modem, thereby reducing initialization time.

It is respectfully submitted that DiNatale teaches an initialization process that includes downloading a configuration file that has the file name of an operating software table file, comparing the operating software table file name with the version currently stored within the cable modem, determining the latest operating software version for its class and downloading the latest operating software version if this version differs from the version currently in use. On the other hand, it is respectfully noted that the claimed invention only receives the information related to the configuration file and not the actual configuration file in order to reduce the required initialization time of the cable modem.

With regard to claim 17, it is respectfully noted that the Examiner asserts, at page 13 of the Office Action, that DiNatale discloses “comparing the files” at pg. 7, line 29 to pg. 8, line 16. It is further respectfully noted that the Examiner asserts, at page 14 of the Office Action, that DiNatale discloses “comparing the file version information” at pg. 10, ll. 18-27.

However, it is further respectfully noted that claim 17 does not recite simply “comparing the files” and “comparing the file version information” but rather recites comparing the file name part of the first configuration file information to a file name part of the second configuration file information and comparing the file version part of the first configuration file information to a file version part of the second configuration file information only if the file name part of the first configuration file information is identical to the file name part of the second configuration file information. It is respectfully submitted that claim 17 recites that **only** the file name parts are compared if the file name parts are **not identical** and **both** the file name parts and the file version parts are compared if the file name parts **are identical**.

It is respectfully noted that the disclosure in DiNatale is that the “operating software table file name[s]” are compared at step 86 and step 92. Pg. 7, ll. 29-31 and pg. 9, ll. 10-12 and FIG. 3. It is further respectfully noted that the comparison of the “operating software table file name[s]” in step 92 is performed regardless of the outcome of the comparison of the “operating software table file name[s]” in step 86 “as illustrated by both the “NO” path and “YES” path from step 86 in FIG. 3 leading to steps 90 and 92 in FIG. 3. Moreover, it is respectfully noted that the disclosure in DiNatale is that “in lieu of the file name set forth in the operating software table file, ... there can be displayed simply a version number indicative of the latest version of the operating software.” Pg. 10, ll. 18-21.

It is respectfully submitted that DiNatale, by disclosing “a version number” that is used “in lieu of” the “file name,” fails to disclose a comparison of **both** the “file name” and “version number” when the “file name[s]” are identical, as recited by claim 17. It is further respectfully submitted that DiNatale also teaches away from any modification to compare **both** the “file name” and “version number” since the disclosure is “a version

number" is used "in lieu of" the "file name" and, therefore, one of ordinary skill in the art would not be motivated to modify the DiNatale invention to use "a version number" **in addition to** the "file name."

Notwithstanding that DiNatale fails to disclose a comparison of **both** the "file name" and "version number," it is respectfully submitted that even if the comparison of the "operating software table file name[s]" at step 92 of FIG. 3 were replaced by a comparison of "version number[s]," the comparison of the "version number[s]" in step 92 of FIG. 3 would be performed even if the "operating software table file name[s]" were not identical in step 86 of FIG. 3, since DiNatale discloses that the comparison in "step 92" is performed regardless of the outcome of the comparison in "step 86." It is further respectfully submitted any such modification of DiNatale would produce a method that is contrary to the recitation of only if the file name part of the first configuration file information is identical to the file name part of the second configuration file information in claim 17.

It is respectfully submitted that Gatherer teaches a parser which receives a bit stream and parses the incoming bit stream into m-bit symbols in consideration of the coding. It is further respectfully submitted that Rainard teaches recognizing a delimiter in the precursor binary data train to resynchronize the reception of information cells in the transmitted data elements.

It is respectfully submitted that Gatherer and Rainard fail to cure the deficiencies of DiNatale with regard to comparing the file name part of the first configuration file information to a file name part of the second configuration file information and comparing the file version part of the first configuration file information to a file version part of the second configuration file information only if the file name part of the first configuration file information is identical to the file name part of the second configuration file information, as recited in claim 17. Therefore, it is further respectfully submitted that the Examiner has failed to establish the required prima facie case of obviousness.

It is respectfully asserted that claim 17 is allowable over the cited combination of references, as is claim 18, which depends from claim 17. It is further respectfully

asserted that independent claim 11, which recites limitations similar to claim 17, as well as claims 13 and 14, which depend from claim 11, also are allowable over DiNatale.

Claims 1 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roeck et al. ("Roeck" U.S. Pat .No. 6,574,796) in view of DiNatale. This rejection is respectfully traversed.

As was previously respectfully submitted, independent claim 17 is allowable over DiNatale. It is respectfully noted that independent claim 1 has been amended with this paper to recite comparison limitations similar to those recited in claim 17. Therefore, it is further respectfully submitted that independent claim 1 also is allowable over DiNatale.

It is respectfully submitted that Roeck teaches a cable modem comprising a processor configured to handle a plurality of modulation schemes and a downstream receiving component operating in conjunction with the processor and configurable by the processor to detect any one of the plurality of modulation schemes at a particular time including one or more non-default modulation schemes for a downstream channel in a cable television plant. It is further respectfully submitted that Roeck teaches amplifiers, a tuner, a media access control unit for manipulating addresses in data packet headers and a transmitter chip for modulating digital data to an analog signal for transmission upstream. Moreover, it is respectfully submitted that Roeck fails to cure the deficiencies of DiNatale with regard to claim 1.

Therefore, it is respectfully asserted that claim 1 is allowable over the cited combination of references. It is further respectfully asserted that claim 4, which depends from claim 1, also is allowable over the cited combination of references.

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Roeck in view of DiNatale as applied to claim 1, and further in view of Welles, II et al. ("Welles" U.S. Pat. No. 6,532,495). This rejection is respectfully traversed.

As was previously respectfully submitted, independent claim 1 is allowable over Roeck and DiNatale. It is further respectfully submitted that Welles teaches an Internet download enhancement system for downloading a file in which a downloaded file is received over either a narrow band download path or a broadband broadcast download path with selectable download options based at least on an unused bandwidth of one or

more of the download paths, thereby enabling the input of a selected download option. Moreover, it is respectfully submitted that Welles fails to cure the deficiencies of Roeck, and DiNatale with regard to claim 1.

Therefore, it is respectfully asserted that claim 1 is allowable over the cited combination of references. It is further respectfully asserted that claim 2 is also allowable over the cited combination of references based on its dependence from claim 1.

Claims 5 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roeck in view of DiNatale as applied to claim 1 and further in view of Gatherer in view of Rainard. This rejection is respectfully traversed.

As was previously respectfully submitted, independent claim 1 is allowable over Roeck and DiNatale. As was further previously respectfully submitted, Gatherer and Rainard fail to cure the deficiencies of DiNatale with respect to claim 17. Moreover, it is further respectfully submitted that Gatherer and Rainard also fail to cure the deficiencies of DiNatale with respect to claim 1.

Therefore, it is respectfully asserted that claim 1 is allowable over the cited combination of references. It is further respectfully asserted that claims 5 and 6, which depend from claim 1, also are allowable over the cited combination of references.

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over DiNatale in view of Gatherer. This rejection is respectfully traversed.

As was previously respectfully submitted, independent claim 11 is allowable over DiNatale. As was further previously respectfully submitted, Gatherer fails to cure the deficiencies of DiNatale with respect to claim 17. Moreover, it is respectfully submitted that Gatherer also fails to cure the deficiencies of DiNatale with respect to claim 11.

Therefore, it is respectfully asserted that claim 11 is allowable over the cited references. It is further respectfully asserted that claim 12, which depends from claim 11, also is allowable over the cited references.

Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over DiNatale in view of Rainard. This rejection is respectfully traversed.

As was previously respectfully submitted, independent claim 11 is allowable over DiNatale. As was further previously respectfully submitted, Rainard fails to cure the deficiencies of DiNatale with respect to claim 17. Moreover, it is respectfully submitted that Rainard also fails to cure the deficiencies of DiNatale with respect to claim 11.

Therefore, it is respectfully asserted that claim 11 is allowable over the cited combination of references. It is further respectfully asserted that claim 15, which depends from claim 11, is also allowable over the cited combination of references.

CONCLUSION

In light of the above remarks, Applicant submits that claims 1, 2, 5, 6, 11-15, 17 and 18 of the present application are in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

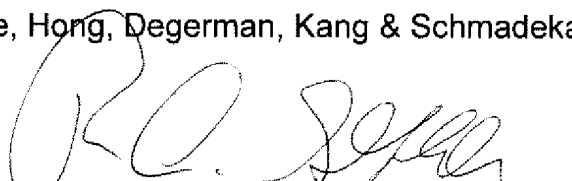
If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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